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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (BRL) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, and Bernard L. Madoff, Plaintiff, v. KOCH INDUSTRIES, INC., as successor in interest to Koch Investment (UK) Company, Defendant.	Adv. Pro. No. 12-01047 (BRL) Re: D.I. 10, 11, 12, 14

RESPONSE OF KOCH INDUSTRIES, INC.
TO ORDER TO SHOW CAUSE

On May 8, 2012, this Court entered its *Order to Show Cause Why Defendants Should Not Be Required to Make Expedited Limited Initial Disclosures or to Provide Immediate Notice of Certain Adversary Proceedings* (D.I. 14) (the "**Order to Show Cause**") upon an application (D.I. 10) (the "**Application**") filed by Irving Picard, as trustee (the "**Trustee**") for the liquidation of Bernard L. Madoff Investment Securities LLC ("**BLMIS**") and the substantively consolidated estate of Bernard L. Madoff. Koch Industries, Inc. ("**Koch**"), by its undersigned attorneys, submits this response to the Order to Show Cause.

The Application requests that the Court order Koch to disclose the identity of, or in the alternative provide notice of the Trustee's complaint against Koch to, "any other recipient" of the transfers the Trustee's complaint alleges BLMIS made to Koch Investment (UK) Company, "any and all persons or entities for whose benefit" such transfers were made, and "any and all persons or entities who exercised dominion and control" over such transfers (the "**Trustee's Requested Order**"). (*See* Order to Show Cause, at 2 and Ex. B, Schedule A(33).)

The Application fails because it asks the Court to order Koch to make disclosure or provide notice in its alleged capacity as "successor in interest to Koch Investment (UK) Company" (*Id.*)—an entity which the Trustee's complaint alleges dissolved in August of 2009 (Complaint, D.I. 1, ¶ 32). To date, the Trustee has not stated a colorable claim, let alone satisfied his burden of establishing, that Koch is a valid successor in interest to Koch Investment (UK) Company.[1] Thus, entry of the Trustee's Requested Order would permit the Trustee to improperly bypass his burden of proof, disregard Koch's corporate identity, and impose on Koch an affirmative obligation to investigate on an expedited basis what information is known by a distinct (and dissolved) foreign corporate entity.

[1] Koch denies that it is a successor in interest to Koch Investment (UK) Company and reserves all of its rights to fully respond to the Trustee's complaint at a later date. (*See* D.I. 9.)

Koch also joins in the objections to the Application set forth in section II.B of the *Opposition of Banque Sysz and Unifortune to the Trustee's Application for Expedited Disclosure of Customer Information or, Alternatively, to Require Certain Notices* [Adv. Pro. No. 11-02149], and section II of the *Objection to the Application By Way of Order to Show Cause Seeking Entry of an Order Directing Defendants to Make Expedited Limited Initial Disclosures, or to Provide Immediate Notice of Certain Adversary Proceedings* filed by Merrill Lynch Banc (Suisse) SA [Adv. Pro. No. 11-02910], which Koch hereby incorporates by reference.

Finally, Koch objects to the overbroad scope of the Trustee's Requested Order. Given that the stated goal of the Application is to "learn the identities of any person or entity for whom [Koch] may argue it served as a conduit" (Memorandum of Law in Support of the Application, D.I. 11, at 7), the Trustee's Requested Order should be tailored to this purpose. At a minimum, therefore, the disclosure or notification required by the Trustee's Requested Order should be limited to those persons or entities for whom Koch intends to argue that it acted as a conduit.

WHEREFORE, Koch respectfully requests that the Court deny entry of the Trustee's Requested Order and award Koch such other relief as the Court deems just and proper.

Dated: May 14, 2012
Washington, D.C.

Respectfully submitted,

/s/ Jonathan P. Guy

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